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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Jammu and Kashmir - "Protection of human rights during violence and conflict"

Jammu and Kashmir Council for Human Rights wishes to congratulate the High Commissioner for Human Rights for his comprehensive report A/HRC/28/3 under agenda item 2 of the Twenty-eighth session of the Human Rights Council. The wide range and broad spread of the report is encouraging and holds a hope to many other people somehow not reflected in this report.

JKCHR would wish to state that as part of our continued contribution to the full regime of Human Rights and the work of the office of the High Commissioner (during the creation of the office of High Commissioner) since the NGO represented the Unrepresented Peoples and Nations of the World at the UN World Conference on Human Rights in Vienna in June 1993, this identification of a people and a situation left out from the report does not constitute any criticism of the merits of the report but is a genuine effort to increment the efficacy of the constituency of the work of the office of the High Commissioner for Human Rights, UN Secretary General and the Council.

It is our considered opinion that "Protection of human rights during violence and conflict", "Early warning and preventive action" and "Human rights, peace and security" chapters in the report could have been more sensitive and fully representative of the work and mandate, if the situation of Jammu and Kashmir, which has caused the death of a generation since 1990 and more particularly where 117 persons were killed by the Indian security forces during a series of peaceful protest between January 2010 and December 2010.

Out of 117 persons. FIR has been lodged in respect of 37 deaths only and a Challan has been produced in the court in respect of 7 cases only. All these deaths have been caused by Police and Armed Personnel. The Armed Personnel of Indian army have been admitted into the disputed State of Jammu and Kashmir to defend the 'territory' and protect 'life', 'property' and 'honour' of the people. Its role is slated as supplemental to assist the State Government in maintaining law and order, to enable the State to set up a neutral administration to carry out the work assigned to it under the UNCIP Resolutions on Kashmir.

United Nations Security Council Resolution of 21 April 1948 sets out the number, behaviour and location for these security forces.

The death of around 70000-100000 caused from 1990 to date and the deaths from January 2010 to December 2010 and a culture of continued killings in encounters (some proven fake) in the disputed territory present a sad commentary on the failure of Indian security forces to respect and honour the duties that caused their admission and further presence in the conflict area.

The situation has all the merits for an initiative of the UN Secretary General under article 99 of the Charter in respect of the right of self-determination as equal people, of the people of Jammu and Kashmir to be determined through a free vote under the auspices of UN Security Council. In the month of September 2014 the General Assembly heard the views of the Prime Minister of Pakistan and the Prime Minister of India on the question of Kashmir.

It is unfortunate that from 01 October 2014 India and Pakistan are engaged in a low intensity war on the cease fire line in Kashmir. The violation of cease fire in Jammu and Kashmir continues to result in a daily loss of life. People of Jammu and Kashmir are outsourced under UN mechanism into the trust responsibility of three administrations under the controls of India and Pakistan on either side of cease fire line.

In view of the UN mechanism on the resolution of Kashmir case, the death of a generation in Kashmir from 1990 - to date, enduring a violation of human rights never witnessed in the history of Kashmir from 1846-1990, violation of all the four duties agreed at the time of the despatch of its army to Kashmir by India in October 1947 (a matter which remains justiciable till to date on the UN SC agenda) and failure of the Government of India to assist the Government of Jammu and Kashmir to start preparing under the supervision of UN SC for an atmosphere conducive to arrange a Plebiscite, failure of the Government of India to honour the restraints placed in SC Resolution of 21 April 1948 on the number, behaviour and location of Indian security forces during their stationing in Kashmir and failure of the Government of Jammu and Kashmir to observe the caution given in UN SC Resolution of 30 March 1951, it is high time that the office of the High Commissioner for Human Rights acts to help the three people, namely, people of Kashmir (distributed under three administrations), people of India and Pakistan to return to peace and discharge their obligations in the implementation of UN mechanism on Kashmir.

JKCHR wishes to point out that article 99 gives the UN Secretary General the right of initiative in any matter which in his opinion may threaten the maintenance of international peace and security. The Declaration on Fact-Finding by the UN in the field of Maintenance of International Peace and Security which was adopted by the GA on December 9, 1991, enhances these capabilities of the UN and strengthens the role of the Secretary General. In accordance with this Declaration, the Secretary General can start an activity to obtain detailed knowledge of the relevant facts of any dispute, or threatening conflict, in which the competent UN organs need effectively to exercise their functions pertaining to the Maintenance of International Peace and Security.

We understand that Adviser to the Prime Minister of Pakistan on National Security and Foreign Affairs, Mr. Sartaj Aziz, has addressed a letter to UN Secretary General on the security situation along the Line of Control in Jammu and Kashmir and the Working Boundary between Pakistan and India.

We welcome the reiteration of the principled stand on Kashmir by the Prime Minister of Pakistan during his address at the UN General Assembly. JKCHR also welcomes the statement of UN Secretary General on 9 October 2014 in which he expressed concern about the recent escalation of violence along the Line of Control between India and Pakistan, and deplored the loss of lives and the displacement of civilians on both sides. UN SG has encouraged the Governments of India and Pakistan to resolve all differences through dialogue.

The statement is a realisation of responsibilities under article 99 of the Charter. It is high time that UN returns to occupy itself with the right of return and rights of first generation of refugees (internally displaced from various parts of the State) on either side of the cease fire agreed in January 1949 in the State of Jammu and Kashmir, agreed between India and Pakistan.

It should concern the office of the High Commissioner on Human Rights and members of the Council that over the period of a non-implementation of UN mechanism on Kashmir more people became refugees in 1965, 1971 and 1990. It is not only that the first assurance of April 1948 guaranteeing "freedom to return to their homes and to exercise their rights as such citizens," has not been followed upon as slated by the UN Security Council, there have been further additional displacements as well.

The resurgence of Hindu radical interest in the multi-faith habitat of Kashmir is a serious threat to the interests of the Muslims. RSS is known to have sent volunteers in 1931 to assist the Dogra forces to suppress the Muslim uprising in the Valley. RSS has reprinted its claim entitled "Kashmir The Spiritual Home of Hindus". It adds that "The Maharaja is more sinned against than sinning. The Hindu kingdom is one of the oldest in world history and is an indissoluble part of the cultural hegemony of the Hindustan". The reprint's object is obvious – that Hindu Raj should now be revived in Kashmir.

It goes without any doubt to point out that India and Pakistan would never succeed to resolve the Kashmir dispute if either of the two or both seek to distance away from the UN mechanism on Kashmir. There is a compelling need that UN mechanism on Kashmir is agitated without any further delay for the interest of the parties and peace.

Meanwhile, it is important that Government of India is urged to respect the four duties agreed before the provisional admission of its armies into Kashmir and honours the 3 principles laid down in UN SC Resolution regulating the number, behaviour and location of its armies until a Plebiscite is held. We regard the death of unarmed civilians in Jammu and Kashmir (Indian administered) and death of a Kashmiri living across the cease fire line (on the Pakistani side) at the hands of Indian army as deliberate and a war crime.